

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE MERRILL LYNCH & CO., INC.  
SECURITIES, DERIVATIVE AND ERISA  
LITIGATION

Master File No.:  
07cv9633 (JSR)(DFE)

This Document Relates To: Derivative Action,  
07cv9696 (JSR)(DFE)

**DECLARATION OF DAVID A.P. BROWER IN SUPPORT OF PLAINTIFF'S MEMORANDUM OF  
LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE VERIFIED THIRD  
AMENDED SHAREHOLDER DERIVATIVE AND CLASS ACTION COMPLAINT**

I, David A.P. Brower, hereby declare, under penalty of perjury, as follows:

1. I am a principal of the law firm of Brower Piven, A Professional Corporation. I submit this Declaration in support of Plaintiff's Memorandum of Law in Opposition to Defendants' Motions To Dismiss the Verified Third Amended Shareholder Derivative and Class Action Complaint;
2. Attached hereto as Exhibit A is a true and correct copy of the transcript from the Argument and Ruling on the Motion to Dismiss in *In re Bank of America Corporation Stockholder Derivative Litigation*, No. CA 4307-VCS (Del. Ch. Oct. 12, 2009); and
3. Attached hereto as Exhibit B is a true and correct copy of the Declaration of Samuel T. Cohen, dated October 19, 2009.

Executed: October 19, 2009  
New York, New York

/s/ David A.P. Brower  
David A.P. Brower